



**<NOTICE>**

**<PREAMB>**

**<AGENCY TYPE='S'>DEPARTMENT OF THE INTERIOR**

**<SUBAGY>Fish and Wildlife Service**

**<DEPDOC>[FWS-R8-ES-2011-N243; FF08E00000-FXES11120800000F2-112]**

**<SUBJECT>Draft Environmental Impact Statement and Proposed Vernal Pool Habitat Conservation Plan for the City of San Diego, CA**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent and announcement of a public meeting; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), intend to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) of 1969, as amended, for the proposed Vernal Pool Habitat Conservation Plan (VPHCP) under development by the City of San Diego (City). The draft EIS will evaluate the impacts of several alternatives related to the VPHCP being prepared by the City in support of the City's anticipated application for an Endangered Species Act (ESA) permit for incidental take of seven federally listed vernal pool species, from activities associated with urban development activities. We also announce plans for a public scoping meeting and the opening of a public comment period. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

**DATES:** To ensure consideration, please send your written comments by February 16<sup>th</sup>, 2012.

For more information, see “Public Comments” and “Reasonable Accommodation” under the <E T='02'>SUPPLEMENTARY INFORMATION</E> section.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comment is in reference to the City of San Diego Vernal Pool HCP:

- Fax: Attn: Jim Bartel, Field Supervisor, (760) 431–5902.
- U.S. Mail: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011.
- In-Person Drop-off: You may drop off comments during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Karen Goebel, Assistant Field Supervisor, by phone at (760) 431–9440, or by U.S. mail at the above address; or Jeanne Krosch, Senior Planner, City of San Diego, by phone at (619) 236-7225.

**SUPPLEMENTARY INFORMATION:** We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA), and its

implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*; ESA). We intend to prepare a draft environmental impact statement to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the City of San Diego, as well as impacts from implementation of the supporting habitat conservation plan. The EIS will be a joint document with an environmental impact report (EIR) prepared by the City under the California Environmental Quality Act (CEQA).

The City proposes to develop a Vernal Pool HCP as part of their application for an ITP under section 10(a)(1)(B) of the ESA. The proposed VPHCP will include measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of potential proposed taking of federally listed species to be covered by the VPHCP, and the habitats upon which they depend, resulting from residential, commercial, and other development activities within the proposed plan area.

In addition to this notice, the City has publicly released a CEQA notice of preparation for its EIR via State Clearinghouse and local media. Please see <http://www.sandiego.gov/development-services/industry/pdf/infobulletin/ib401.pdf> for more information on the CEQA process.

The proposed VPHCP would establish the structure to integrate development and vernal pool conservation in the City.

The proposed VPHCP would serve as a multiple-species HCP for the City in its application for an ITP under section 10(a)(1)(B) of the ESA. If the application is approved by the Service, the City would obtain authorization for the incidental take of certain threatened and endangered animal species (“covered species”). If the Federal permit is issued, the City could extend the permit authorization to proponents of development projects under the City’s jurisdiction.

## <HD1>**Background**

Section 9 of the ESA prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the ESA, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harm” is defined in the regulations as including significant habitat modification or degradation that results in death or injury to listed wildlife species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in the regulations as to carry out actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed wildlife species, provided that the take is incidental to, but not

the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened wildlife species are 50 CFR 17.22 and 17.32, respectively. The ESA's take prohibitions do not apply to federally listed plants. However, other provisions of the Act prohibit the removal or destruction of plants on non-federal lands in violation of State law.

Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the take of endangered and threatened wildlife species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Thus, the purpose of issuing an ITP to the City would be to allow the City, under its local authority, to authorize development while conserving the covered species and their habitats. Implementation of a vernal pool species habitat conservation plan, rather than a species-by-species or project-by-project approach, is intended to maximize the

benefits of conservation measures for covered species and eliminate expensive and time-consuming efforts associated with processing individual ITPs for each project within the City's proposed plan area. The Service expects that the City will request ITP coverage for a period of 50 years.

#### <HD2>*Project Area*

The proposed VPHCP Planning Area covers approximately 206,124 acres of land in the City's jurisdiction, including City-owned lands in the unincorporated areas of Otay Lakes and Marron Valley, where development potentially may occur. The proposed VPHCP would cover non-Federal lands in the Planning Area. To facilitate timely and environmentally responsible development, the proposed VPHCP may focus on specific areas for development, such as Otay Mesa, Kearny Mesa, Mira Mesa, and Del Mar Mesa.

#### <HD1>**Alternatives in the Draft Environmental Impact Statement**

The proposed action presented in the draft EIS will be compared to the no-action alternative. The no-action alternative represents estimated future conditions assuming an ITP is not issued, to which the proposed action's estimated future conditions can be compared. Other alternatives, including their potential impacts, will also be addressed in the draft EIS.

<HD2>*No-Action Alternative*

Because future development activities are vital for the City, these activities would likely continue regardless of whether the proposed 10(a)(1)(B) ITP is issued. Where a specific project would result in potential impacts to federally protected species within the proposed permit area that could not be avoided and a federal permit or federal funding is involved, i.e., there is a federal nexus for the project, the project proponent would address impacts in accordance with the an individual formal or informal consultation under Section 7 of the Act between the Federal authorizing agency and the Service. If no federal nexus exists for a proposed project that is likely to result in take of a listed vernal pool animal species, the project proponent would likely seek an individual section 10(a)(1)(B) ITP on a project-specific basis. Although future activities by the City or a private applicant would be similar to those covered by the VPHCP, not all activities would necessitate an incidental take permit or consultation with the Service. Thus, under the no-action alternative, the City and various project proponents would likely have to file numerous separate section 10(a)(1)(B) permit applications over the 50-year project period. This activity-by-activity approach would be more time-consuming and less efficient than authorizing activities under an umbrella incidental take permit, and could result in a fragmented mitigation approach.

<HD2>*Proposed Alternative*

The proposed action is the issuance of an ITP to the City of San Diego covering impacts to seven vernal pool species resulting from development activities authorized by the City within the proposed Planning Area for a period of 50 years. The purpose of the Vernal Pool HCP would be to contribute to the conservation of the covered species while streamlining endangered species permitting for development projects. The Vernal Pool HCP, which must meet the requirements of section 10(a)(2)(A) of the ESA, would be developed and implemented by the City through its local regulatory and land use authorities. This alternative would allow for a comprehensive mitigation approach for unavoidable impacts and reduce permit processing times and efforts for the City and the Service.

Potential impacts to covered species would be addressed through a conservation program that includes avoidance, minimization, mitigation, preservation, and restoration and enhancement of habitat for covered species by multiple components, such as reserve design and assembly processes, protection and management elements, funding assurances, monitoring, and adaptive management within the VPHCP planning area.

The planning goals of the Vernal Pool HCP are anticipated to include the following:

- Provide for long-term conservation and management of Covered Species within the VPHCP area;
- Preserve, restore, and enhance vernal pool ecosystems that support Covered Species within the VPHCP area;
- Build on the City's general plans;



- Further identify the most appropriate locations within the VPHCP area for development projects, taking into account potential impacts to threatened and endangered species and their vernal pool habitat;
- Provide a means to implement covered activities in a manner that complies with the ESA, NEPA, CEQA, and other relevant laws;
- Provide a basis for the issuance of take authorizations allowing the lawful take of covered species incidental to covered activities;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for covered activities within the plan area;
- Provide a framework for a more efficient process by which proposed development projects with the plan area may obtain regulatory authorizations, and which results in greater conservation values than would a project-by-project, species-by-species review; and
- Identify and incorporate climate change adaptation research, management objectives, and policies into the final plan document.

More information on the proposed VPHCP is available on the internet at  
<http://www.sandiego.gov/planning/mscp/>.

<HD2>*Covered Activities*

The covered activities under the VPHCP are expected to include residential, commercial, and industrial development; airports; roads; utilities; trails; and vernal pool restoration and enhancement.

#### <HD2> *Covered Species*

We anticipate that the following federally listed endangered wildlife species will be included as covered species in the City of San Diego's proposed VPHCP: the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottonii*). Take of federally listed plant species is not prohibited under the ESA, and authorization under an ESA ITP is not required. Section 9 of ESA does, however, prohibit the removal or malicious destruction of federally listed plants from areas under Federal jurisdiction and the removal or destruction of such plants in knowing violation of State law. In addition, section 7(a)(2) of the ESA prohibits Federal agencies from jeopardizing the continued existence of any listed plant or animal species, or destroying or adversely modifying the critical habitat of such species. The following federally listed plant species are anticipated to be included in the VPHCP in recognition of the conservation benefits to be provided for them under the plan and to be listed on the ITP for purposes of receiving mitigation assurances: the threatened spreading navarretia (*Navarretia fossalis*), the endangered San Diego button celery (*Eryngium aristulatum* var. *parishii*), the endangered San Diego mesa mint (*Pogogyne abramsii*), the endangered California Orcutt grass (*Orcuttia californica*), and the endangered Otay mesa mint (*Pogogyne nudiscula*).

## <HD2>*Conservation Alternative*

An expanded conservation alternative that would conserve additional vernal pool resources and provide increased opportunities for restoration and enhancement of vernal pool habitat will also be considered in the draft EIS.

## <HD1>**Environmental Review and Next Steps**

The Service will conduct an environmental review to analyze the proposed action, along with other alternatives evaluated and the associated impacts of each. The draft EIS will be the basis for the impact evaluation for each covered species and the range of alternatives to be addressed. The draft EIS is expected to provide biological descriptions of the affected species and habitats, as well as the effects of the alternatives on other resources, such as vegetation, wetlands, wildlife, geology and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, local economy, and environmental justice.

Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on the draft EIS and the City's permit application, which will include the proposed HCP. The draft EIS and proposed HCP are expected to be completed and available to the public in late summer 2012.

## <HD1>Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing a draft EIS and in the development of a HCP and ITP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the planning area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other alternatives to the proposed action that should be analyzed in the draft EIS.
7. Identification of any other environmental issues that should be considered in the draft EIS.

You may submit your comments and materials by one of the methods listed in the ADDRESSES section.

Comments can also be submitted to the City in response to their notice of EIR preparation under CEQA at *DSDEAS@sandiego.gov*, and comments will also be included as an appendix to the draft EIR/EIS.

Comments and materials we receive, as well as supporting documentation we use in preparing the draft EIS, will be available for public inspection by appointment, during normal business hours, at our office (see <E T='02'>FOR FURTHER INFORMATION CONTACT</E>).

#### <HD1>**Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### <HD1>**Authority**

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and by NEPA Regulations (40 CFR 1501.7, 40 CFR 1506.6, and 1508.22).

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U.S. Fish and Wildlife Service,  
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